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3  
4 **UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

5 GAYLE A. YOUNG-  
DOHRMAN,

6  
7 Plaintiff,

8 v.

9 CENTRAL WASHINGTON  
UNIVERSITY,

10 Defendant.  
11

NO. 1:15-CV-03048-LRS

STIPULATED  
PROTECTIVE  
ORDER

12 **1 PURPOSES AND LIMITATIONS**

13 Discovery in this action is likely to involve production of confidential,  
14 proprietary, or private information, including but not limited to confidential or  
15 privileged information relating to third parties for which special protection may  
16 be warranted. Accordingly, the parties hereby stipulate to and petition the court  
17 to enter the following Stipulated Protective Order. The parties acknowledge that  
18 this agreement is consistent with LCR 26(c). It does not confer blanket protection  
19 on all disclosures or responses to discovery, the protection it affords from public  
20 disclosure and use extends only to the limited information or items that are  
21 entitled to confidential treatment under the applicable legal principles, and it does  
22 not presumptively entitle parties to file confidential information under seal.

## 2      “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

1) E-mails, documents, written or electronic information, data, or records relating to accommodation requests between 2012 and 2015 by third parties who are not named in this litigation, including the basis for the accommodation request and the employer’s response to the request;

2) Internal communications at CWU relating to non-party employees, including personnel decisions, hiring and promotion decisions, disciplinary decisions, and/or other decisions that pertain to non-party employees that would not be subject to public disclosure and which are relevant to the claims in this litigation. Whether the records are relevant will be determined by agreement between the parties or if necessary, an order from the court;

3) Plaintiff’s medical records.

## 3.      SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

#### 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

1           4.1 Basic Principles. A receiving party may use confidential material  
2 that is disclosed or produced by another party or by a non-party in connection  
3 with this case only for prosecuting, defending, or attempting to settle this  
4 litigation. Confidential material may be disclosed only to the categories of  
5 persons and under the conditions described in this agreement. Confidential  
6 material must be stored and maintained by a receiving party at a location and in  
7 a secure manner that ensures that access is limited to the persons authorized under  
8 this agreement.

9           4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
10 otherwise ordered by the court or permitted in writing by the designating party, a  
11 receiving party may disclose any confidential material only to:

12           (a) the receiving party’s counsel of record in this action, as well as  
13 employees of counsel to whom it is reasonably necessary to disclose the  
14 information for this litigation;

15           (b) the officers, directors, and employees (including in house counsel) of  
16 the receiving party to whom disclosure is reasonably necessary for this litigation,  
17 unless the parties agree that a particular document or material produced is for  
18 Attorney’s Eyes Only and is so designated;

19           (c) experts and consultants to whom disclosure is reasonably necessary for  
20 this litigation and who have signed the “Acknowledgment and Agreement to Be  
21 Bound” (Exhibit A);  
22

1 (d) the court, court personnel, and court reporters and their staff;

2 (e) copy or imaging services retained by counsel to assist in the duplication  
3 of confidential material, provided that counsel for the party retaining the copy or  
4 imaging service instructs the service not to disclose any confidential material to  
5 third parties and to immediately return all originals and copies of any confidential  
6 material;

7 (f) during their depositions, witnesses in the action to whom disclosure is  
8 reasonably necessary and who have signed the “Acknowledgment and  
9 Agreement to Be Bound”(Exhibit A), unless otherwise agreed by the designating  
10 party or ordered by the court. Pages of transcribed deposition testimony or  
11 exhibits to depositions that reveal confidential material must be separately bound  
12 by the court reporter and may not be disclosed to anyone except as permitted  
13 under this agreement;

14 (g) the author or recipient of a document containing the information or a  
15 custodian or other person who otherwise possessed or knew the information. 4.3

16 Filing Confidential Material. Before filing confidential material or  
17 discussing or referencing such material in court filings, the filing party shall  
18 confer with the designating party to determine whether the designating party will  
19 remove the confidential designation, whether the document can be redacted, or  
20 whether a motion to seal or stipulation and proposed order is warranted. Local  
21 Civil Rule 5(g) sets forth the procedures that must be followed and the standards  
22 that will be applied when a party seeks permission from the court to file material

1 under seal. The parties agree to redact third party names and any identifying  
2 information in confidential documents before filing the documents with the court.

### 3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for  
5 Protection. Each party or non-party that designates information or items for  
6 protection under this agreement must take care to limit any such designation to  
7 specific material that qualifies under the appropriate standards. The designating  
8 party must designate for protection only those parts of material, documents,  
9 items, or oral or written communications that qualify, so that other portions of  
10 the material, documents, items, or communications for which protection is not  
11 warranted are not swept unjustifiably within the ambit of this agreement. Mass,  
12 indiscriminate, or routinized designations are prohibited. Designations that are  
13 shown to be clearly unjustified or that have been made for an improper purpose  
14 (e.g., to unnecessarily encumber or delay the case development process or to  
15 impose unnecessary expenses and burdens on other parties) expose the  
16 designating party to sanctions. If it comes to a designating party's attention that  
17 information or items that it designated for protection do not qualify for protection,  
18 the designating party must promptly notify all other parties that it is withdrawing  
19 the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided  
21 in this agreement (*see*, e.g., second paragraph of section 5.2(a) below), or as  
22 otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protection under this agreement must be clearly so designated before or when the  
2 material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents  
4 and deposition exhibits, but excluding transcripts of depositions or other pretrial  
5 or trial proceedings), the designating party must affix the word  
6 “CONFIDENTIAL” to each page that contains confidential material. If only a  
7 portion or portions of the material on a page qualifies for protection, the  
8 producing party also must clearly identify the protected portion(s) (e.g., by  
9 making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial or trial proceedings:  
11 the parties must identify on the record, during the deposition, hearing, or other  
12 proceeding, all protected testimony, without prejudice to their right to so  
13 designate other testimony after reviewing the transcript. Any party or non-party  
14 may, within fifteen days after receiving a deposition transcript, designate portions  
15 of the transcript, or exhibits thereto, as confidential.

16 (c) Other tangible items: the producing party must affix in a prominent  
17 place on the exterior of the container or containers in which the information or  
18 item is stored the word “CONFIDENTIAL.” If only a portion or portions of the  
19 information or item warrant protection, the producing party, to the extent  
20 practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
22 failure to designate qualified information or items does not, standing alone, waive

1 the designating party's right to secure protection under this agreement for such  
2 material. Upon timely correction of a designation, the receiving party must make  
3 reasonable efforts to ensure that the material is treated in accordance with the  
4 provisions of this agreement.

## 5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 6.1 Timing of Challenges. Any party or non-party may challenge a  
7 designation of confidentiality at any time. Unless a prompt challenge to a  
8 designating party's confidentiality designation is necessary to avoid foreseeable,  
9 substantial unfairness, unnecessary economic burdens, or a significant disruption  
10 or delay of the litigation, a party does not waive its right to challenge a  
11 confidentiality designation by electing not to mount a challenge promptly after  
12 the original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve  
14 any dispute regarding confidential designations without court involvement. Any  
15 motion regarding confidential designations or for a protective order must include  
16 a certification, in the motion or in a declaration or affidavit, that the movant has  
17 engaged in a good faith meet and confer conference with other affected parties in  
18 an effort to resolve the dispute without court action. The certification must list  
19 the date, manner, and participants to the conference. A good faith effort to confer  
20 requires a face-to-face meeting or a telephone conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge  
22 without court intervention, the designating party may file and serve a motion to

1 retain confidentiality under Local Civil Rule 7 (and in compliance with Local  
 2 Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall  
 3 be on the designating party. Frivolous challenges, and those made for an improper  
 4 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
 5 parties) may expose the challenging party to sanctions. All parties shall continue  
 6 to maintain the material in question as confidential until the court rules on the  
 7 challenge.

#### 8 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 9 **PRODUCED IN OTHER LITIGATION**

10 If a party is served with a subpoena or a court order issued in other  
 11 litigation that compels disclosure of any information or items designated in this  
 12 action as “CONFIDENTIAL,” that party must:

13 (a) promptly notify the designating party in writing and include a copy of  
 14 the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order  
 16 to issue in the other litigation that some or all of the material covered by the  
 17 subpoena or order is subject to this agreement. Such notification shall include a  
 18 copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be  
 20 pursued by the designating party whose confidential material may be affected.

#### 21 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED** 22



## MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

### 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

### 10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties

1 may agree upon appropriate methods of destruction.

2 Notwithstanding this provision, counsel are entitled to retain one archival  
3 copy of all documents filed with the court, trial, deposition, and hearing  
4 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney  
5 work product, and consultant and expert work product, even if such materials  
6 contain confidential material. The confidentiality obligations imposed by this  
7 agreement shall remain in effect until a designating party agrees otherwise in  
8 writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED this 9<sup>th</sup> day of September, 2015.

11 *s/Lonny R. Suko*

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LONNY R. SUKO  
Senior U.S. District Court Judge

13 CLINE & CASILLAS

14 Stipulated and agreed to by:  
15 ROBERT W. FERGUSON  
Attorney General

16 s/Amy C. Clemmons  
17 AMY C. CLEMMONS, WSBA  
# 22997  
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**EXHIBIT A**

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND  
PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_

I, \_\_\_\_\_, declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the  
Eastern District of Washington on \_\_\_\_\_ in the case of **Gayle A. Young-  
Dohrman v. Central Washington University, Case No. 1:15-CV-3048-LRS.**

I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order, and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Eastern District of Washington for the purpose of enforcing the  
terms of this Stipulated Protective Order, even if such enforcement proceedings  
occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_